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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,629	01/14/2004	Mark James Kline	8194C	4664
27752	7590	12/23/2004	EXAMINER	
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			HILL, LAURA C	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 12/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/757,629

Applicant(s)

KLINE ET AL.

Examiner

Laura Hill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>04 February 2004</u> . | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION*****Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: z-axis. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Scripps (US 4,846,815). With regard to Claim 1 the Scripps reference discloses a wearable article with a surface fastening system with first

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fastening element 53 and second surface fastening element 54 that engage each other in a face-to-face relationship (see Column 9, lines 48-56). The Scripps reference also discloses elastic members 18 that “are affixed to the diaper 10 along both longitudinal marginal portions 50”, thus containing a primary direction of load bearing as claimed (see Column 6, line 64). The Scripps reference teaches a base 68 in second member 54 which “provides strong backing for plurality of engaging elements 74” and a first surface 70 that is analogous to longitudinally inboard edge of engaging element 74 with a stem 76 that has increasing angles from base 68 (see Column 10, lines 46-52). The stem 76 on the first surface 70 is analogous to the increasing dimension Y from the outboard edge of the first fastening element claimed. The disclosed fastening system of Scripps contains a fastening device 52 that resists the shear stresses and peel forces, which act on the waist portions during use (see Column 8, line 17-20).

With regard to Claims 8-10 the Scripps reference discloses “a disposable diaper comprising an absorbent core that is encased between a liquid pervious topsheet and a liquid impervious backsheet, elasticized leg openings, and a fastening device for securing the diaper on the wearer” as claimed.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 2-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scripps (US 4,846,815). With regard to Claims 2 and 7, the Scripps reference discloses a resistance to peel load that "is at least 200g, and preferably at least 500 grams" and a fastening device 52 that "should be designed to resist shear stress of at least about 500 grams and more preferably at least about 750 grams" (see Column 8, lines 55-61). Previous art discloses fasteners that are more likely to fail in a peel mode than in a shear mode due to a smaller peel mode force. Since the resistance to peel load and shear stress resistance could be the same amount as taught by Scripps, it would be obvious to one skilled in the art to increase the peak load in the primary peel direction of load bearing to keep peel resistance from disengaging or to alter the shear force to prevent fasteners from failing during usage as in prior art references, ~~and to alter~~.

With regard to Claim 3, the Scripps reference discloses engaging element 74 with height H that is a design criteria for obtaining the desired peel resistance. As height H increases in comparison to the diameter of the fiber elements 62, peel resistance increases (see Column 12, lines 18-21). The

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height element H is analogous to the laterally outboard edge that is longer than the longitudinally inboard edge 70 since they are in the same perpendicular configuration to each other as the fastening element claims, and the element H alters the fastening area for improved peel disengagement. From the teachings of Scripps, it would be obvious to one skilled in the art to manipulate the shape of the engaging area surface in a similar manner to maximize resistance to peel mode disengagement by including a longitudinally inboard edge that is longer than a laterally outboard edge.

With regard to Claim 4, the Scripps reference discloses a first fastening element member 54 attached to base 68 with bottom surface 82. Since it is not specified that the outboard edge be parallel to the inboard edge, the bottom surface 82 of stem 76 is analogous to laterally outboard edge (see Figure 4), which is shorter than laterally outboard edge 70 as claimed. Therefore, it would be obvious to one skilled in the art that the longitudinally edges vary in length to provide for an increasing dimension Y of the first fastening element as previously discussed from the teachings of Scripps.

With regard to Claim 5, the Scripps reference does not directly disclose an unjoined longitudinally inboard edge in the first fastening element 54 as claimed. However, the bottom surface 82 disclosed by Scripps can be adapted "to retain the fiber elements 62 in engagement with the second member 54 until a sufficient peel force is applied by the user to separate the first and second members" (see Column 11, lines 30-33). It would be obvious from the Scripps' teachings, which modify the shape of surface 82 that result in a modified peel

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force to have a longitudinal edge unjoined from the article to promote peel resistance.

With regard to Claim 6, the Scripps reference discloses a peel load within the range of 200-500 g (see Column 16, lines 62-64). It is well known to those skilled in the art that hook and loop elements have a peel load of up to 8 pounds/inch or 3632 g/inch. It is obvious that the peel load resistance 1000-2000g claimed would fall within that range.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Ribich reference, U.S. patent no. 3,708,833 is cited for showing a fastening system with primary direction of loading, an effective dimension, Y, extending substantially parallel to a longitudinal axis of the article and different levels of resistance to disengagements in different directions. The Robles et al. reference, U.S. patent no. 5,899,895 is cited for showing a thigh and waste panel on a diaper that extend in multiple directions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura Hill whose telephone number is 703-305-0850. The examiner can normally be reached on 8:00 AM-5:30 PM (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (703) 308-1412. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LCH

*LCH*

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